IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.399 OF 2007

Vijaykumar Narayanrao Zalkikar ...Appellant

vs.

Sanjay Narayanrao Zalkikar and ors. ...Respondents

Mr.Sachin Dhakephalkar for the Appellant

CORAM: A.S.OKA,J.
DATE : JUNE 12, 2007.

P.C.:

1. The Appellant is the original Plaintiff in a suit for partition and separate possession of immovable property. An application for temporary injunction made by the Appellant-Plaintiff has been rejected by the impugned order.

2. The learned Advocate for the Appellant submitted that in a suit for general partition, the learned trial Judge ought to have protected the Appellant-Plaintiff by directing the first Respondents not to create third party interests in respect of the suit property. He submitted that ad-interim order of status quo passed by the Trial Court has been operating for last more than three years and therefore, there was no reason for the learned Trial Judge to vacate the said order. He submitted that the cause of action for earlier suit was different.

3. I have considered the submissions. The averments made in the plaint show that on 26th December 1969 a registered deed of partition has been executed. The Appellant had filed a suit in the year 1987 for partition. The said suit has been dismissed. An Appeal preferred by the Appellant against the said decree has been withdrawn. Considering all the factual aspects, the learned Trial Judge declined to grant an equitable and discretionary relief. Considering the aforesaid facts of the case, no fault can be found with the discretionary order passed by the learned trial Judge. Since the substantive suit for partition is pending, it is obvious that all further transactions in respect of the suit property will be subject to final outcome of the suit.

4. Subject to what is stated above, Appeal is dismissed with no order as to costs.

JUDGE